



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

OBJECTS OF RAILWAY LEGISLATION

FRANK W. NOXON

Secretary of Railway Business Association

I HAD the privilege on November 17th in St. Louis at the American Mining Congress of hearing an address by the Editor of the *Railway Age*, Mr. Samuel O. Dunn, which contained some very extraordinary and very startling statistics. Mr. Dunn, covering the ten years ended 1915, showed what had been the growth of traffic, what had been the growth of facilities for handling the traffic. He undertook to estimate how far short the provision of facilities had been in comparison with the growth of traffic during those years, what had been the growth of traffic since, what might be reasonably expected to be the growth of traffic in the next three or four years, what it would cost to make up the arrearage of provision accumulated in the ten years ended 1915, and from now on to provide for facilities for new growth. Equating his figures with some view, both to the changed purchasing power of the dollar and also to the increased use of facilities per unit, larger use of cars, tracks, etc., and then, having made his computations in general, making a very generous deduction for possible error, he figured that in the next three years, at least six billions of dollars of new money must be found to make increase in facilities keep pace with the probable growth of traffic. He remarked that we are hearing on all sides a demand that production be increased. He said, "You cannot increase production in the United States, if you do not provide transportation facilities on an enormous scale with which to do that business."

He told the story about a man who had listened to these figures. The man said, "We will do this business by auto truck." Mr. Dunn said, "How will your manufacturers of auto trucks get their materials? How will you build the pikes on which the trucks are to run, if the railroads cannot carry the cement?"

We have had at this meeting two papers, coming from two distinctly different sources. First we had the voice of the economist, coming out of the still air of delightful studies, and, from his detached point of view, giving you his impressions of the

panorama. Dr. Dixon, I think I may say by way of condensation, let you see that somebody—he said the railways—must have “one more chance.” One more chance to do what? I think he left no question in your minds that he meant one more chance to serve the public adequately.

Whether this one more chance is to be one more chance for the regulators or one more chance for the railways, or for both, we may set aside for a moment, and compare that background from which Dr. Dixon speaks and from which his recommendations proceed, with the recommendations in the paper from Interstate Commerce Commissioner Meyer. I wonder if there was any one in the room who at any point in that discussion, admirable and competent as it was, could detect the slightest anxiety concerning whether facilities were to be adequate in the future. You noticed that, in the enumerated list of recommendations made by the Commission, there was something about adequacy of facilities; you heard no statement to the effect that facilities had been inadequate and, least of all, did you hear any acknowledgment that one factor in a restoration of railway development must be the government and its policy.

We have before us first a bill which was passed by the House of Representatives on November 17th and now goes into the hopper for conference. We have, second, a bill introduced on the 23rd of October by the full Senate Committee, which presumably will be in due course passed by the Senate and, in turn, join the House bill also in the hopper of conference. Do those bills have as their background an acknowledgment that provision of facilities in the past few years has been inadequate; that the main purpose now of legislation must be a resumption of railway development through a rehabilitation of railway credit, and that the government has a function in that matter? Are you prepared to approach the consideration of those measures from that point of view and test them by that yardstick? Do they do it or do they not?

The other night in the new Willard Hotel, returning from my day's labor at about 11:30 p. m., I found two friends of mine seated at a table in the dining room engaged in very violent discussion. I said, “What are you talking about?” They said, “We are talking about the railroad question.” I said, “What phase of it?” One of them said, “This man says there are thirty-seven plans, and I say there are only thirty-six.”

I happen to be the servant of an association which gives its entire time to this matter and which hasn't any plan; one, I think, of the very few associations which have no plan. I think even the indefatigable Mr. Waterman in his chart has been unable to detect that the Railway Business Association has a plan.

There is something more important than that, and it is that we have reached the stage now when numbers of associations and individuals who have felt inclined to support one or another of the plans or of the leading provisions in those plans, have come to see that the function now is to drop plans and try to see whether we cannot be sure that Congress in one way or another accomplishes the purpose that underlies some of the plans.

What does this House bill mean to do? A court, in considering what was intended to be done by a legislature, will always give very great weight to a provision introduced but rejected. If a legislative body refused to do a thing which was asked of it, the court will usually hold that the legislature did not mean to do that thing at least.

I ask you to hear two sentences which were contained in the bill as it came from the House Committee:

The Commission shall be charged with the duty and the responsibility of observing and keeping informed as to the transportation needs and the transportation facilities and service of the country and as to the operating revenues necessary to the adequacy and efficiency of such transportation facilities and service. In reaching its conclusions as to justness and reasonableness of any rate, fare, charge, classification, regulation, or practice, the Commission shall take into consideration the interests of the public, the shippers, the reasonable cost of maintenance and operation, including the wages of labor, materials, and taxes, and a fair return upon the value of the property used or held for the service of transportation.

The House cut those two sentences out. I have studied this bill from beginning to end. I can find no other place where the idea involved in those two sentences stands. The House of Representatives goes to conference without *having* said those things.

Your court also would consider debate; it would consider quotations from reports, in determining whether it was the purpose of the legislature to do a certain thing. Accompanying the report with which this bill was brought in, there was a statement prepared by Interstate Commerce Commissioner McChord, in which he said that there was a decline in railway credit but that the Interstate Commerce Commission was not in any way responsible for this, and the general tenor of that appendix to the Committee report was that, whoever might be to blame, there was no remiss-

ness on the part of the Government in its policy and no need for a change of policy.

In going back still farther, when Interstate Commerce Commissioner Clark, Chairman of the Legislative Committee of the Commission, appeared before the House Committee, he was asked by Chairman Esch whether he would think it advisable to include in the bill which, in its first draft was written by the Commission, that the Commission should take into consideration in the regulation of rates the cost of capital. To which Representative Clark replied he would have no objection to having that go in, because the Commission always had and always would consider the cost of capital, and its course would not be changed in the least if those words went in.

We have in the Senate bill two passages, both occurring on page thirteen of the draft I have in my hand. One is: "No carrier subject to the provisions of this act shall be authorized to receive and retain for the transportation services rendered such proportion of the rates and charges collected by it as may yield in the aggregate more than a reasonable return upon its property investment," a reasonable return, of course, being the return which the court will compel a Commission to permit, a return below which a Commission is forbidden to depress rates. "In changing or modifying rates," etc., "and in viewing them from the standpoint of their effect in producing revenue," etc., "the Commission shall initiate, modify or adjust rates," etc., "as nearly as may be so that the railway carriers as a whole allocated to each district and subject to this act shall earn an aggregate annual net operating income equal as nearly as may be to five and one-half per centum upon the aggregate value as determined," etc.

Here we have a provision which explicitly recognizes that a return must be made upon the securities. It is evident that the purpose here is a restoration of railway credit. Unfortunately, the phrase which I quoted first from this bill seems to negative that and, from other parts of the bill, there are other confusing conflicts as I read it. It may well be that in conference a clarification of these various provisions will result.

But what is behind this Senate Bill? What is in the debate; what is in the report that accompanies the bill? What we have there is the explicit acknowledgment by the full Senate Committee that, to quote as nearly as I can their language, the regulatory

system has failed in the past, because it has not recognized that one of the essential elements, one of the essential aims of government regulation of rates is to attract capital.

Now, I wish to submit to you in the two or three minutes which I hope I still have, a sentence or two which it seems to me Congress ought to embody in substance in any legislation it passes.

To supplement the present federal policy which by the terms of the law is wholly one of restriction, by enacting that rates shall be such as to yield revenue sufficient in the average year to provide necessary expenses and the credit basis so that the average railway may secure adequate improvements and extensions.

Some of those concerned will tell you the Commission will do that anyway. Well, then, what harm is there in saying that they are required to do so in the law? You cannot regulate investors. The investor will buy securities in accordance with his judgment as to whether the rate of return is more attractive to him than from an investment he can get somewhere else. If there is in these bills nowhere that declaration of policy that rates shall be adequate for that purpose, why not say it?

To require that the regulatory authorities from time to time investigate and estimate for a reasonable period in advance the transportation needs of the country and report to Congress or to the public their findings as to such needs and their estimate of the amount of revenue that will in the average year assure approximate accomplishment of such necessary development.

It is said that the Commission considers this, that, and the other. This recommendation is that it shall not only consider past performance, as has been done in connection with the large-scale cases for the last nine years—statistics of the past, in order to determine what shall be the revenue for the future; but, inasmuch as the individual companies must make their budget not for what has passed over the dam, but for the future, just so the Commission shall make a budget of the aggregate needs of the country in advance, and that it shall be in form, that it shall be a tabulation, that it shall be made public, that in a way the Commission signs the pledge that it will carry out these purposes which we say are necessary if the legislation is to succeed.

Carrying that still further in the point of detail, to prescribe that in estimating the net income required in order to attract capital in the amounts found by the regulatory authorities to be necessary, such authorities shall have the power and duty to ascertain and announce from time to time the rate of return which, under changing market money conditions, it is necessary to allow.

In other words, and this is all I have to say, if you put in that bill a rate, whatever the rate, which is prescribed as the rate of

return which is to be permitted, you also say that the Commission is authorized and required to permit not only that minimum rate, but such additional rate as may prove by experience and ascertainment necessary in order actually to attract capital for the improvements and extensions which the business of the country requires.

[571]